

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. V-03/10-168
)
 Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Economic Services Division, terminating his Catamount Health Access Plan (CHAP) coverage because he is eligible for Medicare. The issue is whether petitioner is "uninsured" under the applicable statutes and regulations.

The facts are not in dispute. The parties have briefed the issues. The following decision is based upon the stipulated exhibits and briefs.

FINDINGS OF FACT

1. The petitioner lives with his wife and their minor child. The petitioner is presently seventy years old and does not receive retirement benefits from the Social Security Administration. The petitioner's wife is self-employed.¹

2. The petitioner earned twenty-seven quarters of coverage under Social Security. As a result, he does not

¹ The household's 2009 federal income tax return shows income of \$44,421.

receive retirement benefits from the Social Security Administration.² Petitioner became eligible for Medicare upon turning sixty-five years old. Petitioner received a letter from the Social Security Administration dated June 15, 2005 explaining that if the petitioner enrolled in Medicare Part A, he would be required to pay a premium.

3. The Medicare program is comprised of Parts A (hospital insurance), B (doctor, home health and preventive care), and D (drug coverage). An eligible person can elect to enroll in Part A or Part B. In terms of Part A, only enrollees with less than forty quarters of coverage are charged a monthly premium. All Part B enrollees are charged a monthly premium.

4. Although the petitioner is eligible for Medicare, he has never enrolled in any part of the Medicare program.

5. The petitioner's family applied for medical coverage through the Department on or about November 16, 2007. On that application and all subsequent applications, they noted that no one in the household received Medicare.

² Petitioner does not qualify for Supplemental Security Income (SSI) retirement benefits because his income is considered too high due to spousal deeming rules.

6. The Department found petitioner and his wife eligible for CHAP and found their child eligible for Dr. Dynasaur.

7. The petitioner listed his date of birth on all application forms. The Department did not ascertain until recently that petitioner was over sixty-five years of age and eligible for Medicare.

8. The petitioner is not the only individual who received CHAP or VHAP although eligible for Medicare. During December 2009, the Department sent a mass mailing to households in which a member was sixty-five years old or older and eligible to enroll in Medicare to inform those Medicare eligible members that they were not eligible for CHAP or VHAP and that their coverage would end on February 28, 2010. The notice set out the enrollment period for Medicare and Social Security contact information.

9. The Department issued a Notice of Decision on February 9, 2010 terminating CHAP effective February 28, 2010 for petitioner because he qualifies for Medicare. That Notice was rescinded while the Department looked at whether the petitioner was eligible for the buy-in program³ to help

³ The Department subsidizes Medicare Part A and/or Part B premiums under the buy-in program for low income recipients.

pay for Medicare premiums once petitioner's enrollment begins. The Department determined that the buy-in program was not applicable because the petitioner was not enrolled in Medicare.

10. The Department issued a Notice of Decision on March 11, 2010 terminating CHAP effective March 31, 2010 for petitioner because he qualifies for Medicare. Petitioner appealed this decision in time for continuing benefits.

11. The enrollment period for Medicare runs from January 1 through March 31 of each calendar year. If a person enrolls, his/her Medicare coverage begins on July 1.

12. The petitioner received a letter from the Social Security Administration dated May 6, 2010 regarding Medicare coverage. Petitioner missed the 2010 enrollment period. To obtain Medicare effective July 1, 2011, petitioner needs to enroll during the period of January 1 through March 31, 2011. The premium charges for 2011 are \$753.60/month for Part A and \$176.80/month for Part B totaling \$930.40 per month.

13. The petitioner claims that he cannot afford the cost for Medicare coverage.

ORDER

The Department's decision is affirmed.

REASONS

The Vermont Legislature passed Act 191, An Act Relating to Health Care Affordability, in 2006 that includes premium assistance for uninsured adult Vermonters who are not eligible for the Vermont Health Access Program (VHAP) and whose income is equal to or less than 300 percent of the Federal Poverty Level (FPL). 33 V.S.A. § 1981 *et seq.*

The premium assistance program or CHAP builds upon the VHAP program. VHAP provides health coverage to uninsured low income Vermonters whose income is equal to or less than 185 percent of the FPL. VHAP provided the first expansion of state medical coverage to adult Vermonters who did not meet Medicaid criteria.

A major goal for CHAP has been to further expand health insurance coverage to those individuals who meet program eligibility criteria. A major criterion is that the applicant fit the definition of "uninsured".

The Vermont Legislature defined "uninsured" at 33 V.S.A. § 1982(2) as:

"Uninsured" means an individual who does not qualify for Medicare, Medicaid, the Vermont health access plan, or Dr. Dynasaur and had no private insurance or employer-sponsored coverage that includes both hospital and physician services within 12 months prior to the month of application, or lost private insurance or employer-sponsored coverage during the prior 12 months. . .

In addition, the Legislature addressed eligibility and enacted the following at 33 V.S.A. § 1983(a)(4):

An individual who is or becomes eligible for Medicare shall not be eligible for premium assistance under this chapter.

CHAP is a Medicaid waiver program as is VHAP. To implement first VHAP and then CHAP, Vermont needed a waiver of certain Medicaid requirements from the Department of Health and Human Services through its Centers for Medicare and Medicaid Services. The waiver, in particular, liberalized the income rules and negated the resource rules.

Upon the passage of CHAP, the Agency of Human Services requested an amendment to the existing waiver (known as the Global Commitment). The amendment request noted that Medicare eligible individuals would not be considered "uninsured" under CHAP. The Centers for Medicare and Medicaid approved the amendment.

To implement CHAP, the Department promulgated regulations. The definition of "uninsured" at W.A.M. § 5901(L) mirrors the statutory definition. In addition, W.A.M. § 5915 states:

An individual who qualifies for Medicare, regardless of actual enrollment, shall not be eligible for premium assistance.

When petitioner turned sixty-five years old, he became eligible for Medicare. He chose not to enroll due to the cost, specifically the cost of Part A. Unlike the great majority of Medicare eligible individuals, petitioner faces a premium charge for Part A because he does not have sufficient quarters of coverage.⁴ Petitioner faces a cost of \$930.40 per month for Medicare Part A and Part B coverage if he enrolls in 2011.

The Board has not heard a case in which a Medicare eligible individual was denied or terminated from CHAP. However, VHAP rules include the same provisions for Medicare eligible individuals, and the Board has heard these cases.

The Board found that Medicare eligible individuals do not qualify for VHAP because they do not meet the "uninsured or underinsured" requirement. Fair Hearing Nos. 15,548; 17,430; 17,611; and 19,973.⁵

In Fair Hearing No. 15,548, the petitioner was denied VHAP because he was eligible for Medicare. The petitioner was enrolled in Part A, but chose not to enroll in Part B due

⁴ Petitioner argues in his brief that only 1 percent of Medicare beneficiaries pay for Part A. But, it is hard to put this into perspective given the number of individuals without sufficient coverage who qualify for SSI making them categorically eligible for Medicaid.

⁵ The petitioner in each of the above cases received Medicare Part A at no cost but elected not to enroll in Medicare Part B due to the cost. They were seeking VHAP as a substitute for Part B coverage.

to the cost. He claimed to be "underinsured" until he could enroll and start Part B coverage. The Board found that a plain reading of the regulations supported the Department and stated on page 5 that:

The fact that he has chosen not to enroll for all its [Medicare] benefits does not mean that he is not qualified to receive them.

The Board looked at a subsequent argument that the petitioner's expenses should be taken into account because of his limited income. But, the VHAP regulations do not take into consideration expenses. Fair Hearing Nos. 17,430 and 19,973. The same is true for CHAP.

The petitioner argues that requiring him to enroll in Medicare and pay the equivalent of private insurance charges is contrary to the intent of CHAP to expand health care coverage to low income Vermonters. He points to language in the VHAP fair hearings that requiring petitioners to enroll in Medicare Part B is a reasonable exercise of state power because the premium charge for Part B is reasonable compared to the cost of private insurance. VHAP is intended to provide coverage to eligible low income Vermonters. 33 V.S.A. § 1973(b). CHAP, in contrast, is not a program aimed at low income Vermonters. 33 V.S.A. § 1981. In addition,

petitioner's three-person household had income of \$44,361 in 2009, which is greater than 225 percent of the FPL.

The Legislature chose to exclude Medicare eligible individuals from the CHAP program. Under the plain meaning of the statutory and regulatory language, a Medicare eligible individual is not "uninsured"; thus, ineligible for coverage.

The petitioner argues that the Common Benefits Clause of the Vermont Constitution applies in his case.

Chapter 1, Article 7 of the Vermont Constitution states:

That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part of that community.

The Vermont Supreme Court in Baker v. State, 170 Vt. 194 (1996) articulated the standard for legal review as:

. . .ascertain whether the omission of a part of the community from the benefit, protection and security of the challenged law bears a reasonable and just relation to the governmental purpose. Consistent with the core presumption of inclusion, factors to be considered in this determination may include: (1) the significance of the benefits and protections of the challenged law; (2) whether the omission of members of the community from the benefits and protections of the challenged law promotes the government's stated purpose; and (3) whether the classification is significantly underinclusive or overinclusive.

Baker, *supra* at page 214.

The governmental purpose is found at 33 V.S.A. § 1981 that states CHAP “is established to provide uninsured Vermont residents” financial help in buying health insurance. (emphasis added). The Legislature then defines “uninsured” and finds that Medicare eligible individuals are one group, but not the only group, who is not “uninsured”.

The Vermont Legislature, over the years, acted to increase health care coverage of non-insured Vermonters consistent with the ability of the State to do so. They started with Dr. Dynasaur, added VHAP, and later added CHAP. Both VHAP and CHAP have linked increased coverage to “uninsured” individuals. CHAP has a savings provision at 33 V.S.A. § 1983(d) that allows the Department to restrict enrollment to the most needy or suspend enrollment if there are insufficient funds.

The governmental purpose is to increase health insurance coverage for those who are not eligible for Medicare or those who do not have private or employer-sponsored insurance or those who have not lost their health insurance in the past 12 months except for certain enumerated reasons.

Health insurance is a significant benefit in our society. But, limiting CHAP to “uninsured” individuals promotes the State’s goal of extending coverage to those who

do not have insurance or those who do not qualify for other programs such as Medicare. In addition, the classification is neither underinclusive nor overinclusive. CHAP does not violate the Common Benefit Clause.

Accordingly, the Department's decision is affirmed. 3
V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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